

# DEPENDENCY CASES IN THE CONTEXT OF FLORIDA'S FAMILY COURT

## Legal Issues: Coordinating Multiple Cases Involving One Family

Families in dependency court may also have other court actions during the life of the dependency case. The coordination of these cases can decrease delays in case processing, minimize the issuance of conflicting orders, minimize duplication in hearings, and improve judicial decision making. Below is a compilation of legal questions that may arise when coordinating multiple cases. They do not address every possible legal issue that may arise; certain issues do not yet have clear, bright-line answers, and many others are bound to evolve as courts continue to address these cases. Background and analysis for each answer can be found in Florida's Family Court Tool Kit: Legal Issues on the website: [www.flcourts.org](http://www.flcourts.org).

**Precedence of orders.** Chapter 39 orders affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child take precedence over other orders in civil cases or proceedings. However, if the court has terminated jurisdiction, such order may be modified by a court of competent jurisdiction in any other civil action or proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same minor child. § 39.013(4).

### **Consolidation vs. Coordination: Coordination of Case Files**

**Question:** If one judge is going to handle all of one family's related cases, should those cases be consolidated in one court file with one case number, or should they be "bundled" in their separate files with separate case numbers?

**Answer:** Cases should not be consolidated into one court file. The independent integrity of each file should be maintained. It is the coordination of these related proceedings that is paramount. Currently, the primary means of accomplishing this coordination is through local administrative orders pertaining to family court cases and by assigning all of a family's related cases to one judge whenever possible. It is also recommended that there be a designation on the face of each UFC file so the clerk can easily identify related cases.

### **Consolidation vs. Coordination: Filing Orders in Related Cases**

**Question:** Will single orders be filed for all cases, or will separate orders be filed with copies placed in all open and closed related case files?

**Answer:** In most cases, a single order that addresses and coordinates all of the related cases can be entered. The order should include the case numbers of all affected cases, and a copy should be placed in each file. Copies of the order should go to the attorneys involved in all coordinated cases. Separate orders are sometimes required when coordinating certain criminal, domestic violence, and dependency matters.

### **Consolidation vs. Coordination: Transferring Related Cases**

**Question:** What legal barriers exist for transferring diverse cases to a single judge, and how can a family court ensure it operates within those parameters?

Answer: So long as the judge has jurisdiction to hear the types of cases involved, there is no legal barrier to transferring or assigning a family's related cases to a single judge. Florida rules already offer ways to transfer and assign cases to a single judge. However, developing a local administrative order that details how related cases will be assigned and transferred will help to ensure a uniform policy. Rather than legal barriers, the most prevalent barrier to implementing a family court may be a lack of willingness to change from familiar practices and adapt to a new, coordinated system.

### **Consolidation vs. Coordination: Confidentiality in Domestic Violence Cases**

Question: If a petitioner for a domestic violence injunction requests that his or her address be kept confidential, must anything be done in the other related case files?

Answer: Yes. This information is exempt from the public records provisions of § 119.07(1) and section 24(a), Article I of the State Constitution. Once the request is made to keep the address confidential, it should remain confidential regardless of the type of file it is in. However, as a practical matter, this will take some diligence on the part of the petitioner in alerting the court and clerk of the confidential address and not disclosing the address on his or her own in other court documents.

Family court personnel should work with clerk of court staff and the civil process personnel of the sheriff's office to develop a method to ensure that the address is truly confidential. See Florida Family Law Rule of Procedure 12.007(b). A common way in which confidential addresses are inadvertently revealed in court files occurs when the sheriff's office files the return service.

### **Disagreements when Coordinating Cases**

Question: When the assigned judges disagree on how to coordinate related cases, what should be done?

Answer: There is no absolute answer to this question, but there is a logical process that should be followed. Part of a judge's responsibility, according to the Code of Judicial Conduct Canon 3 C(1), is that a judge "should cooperate with other judges and court officials in the administration of court business." The first step then is for the judges to do their best to resolve the matter themselves. If a legitimate disagreement cannot be resolved by the judges themselves, then they should next refer to a comprehensive administrative order or local rule that anticipates and addresses potential problems and conflicts related to case coordination while taking into account the local judicial culture and the consensus of the circuit's judiciary to resolve the issue. If the disputed issue is not addressed by the administrative order, then the matter may be referred to the administrative judge. Ultimately, the chief judge of each circuit has the authority to resolve these matters pursuant to Florida Rule of Judicial Administration 2.215.

### **One Family/One Judge vs. One Family/One Team**

Question: Are there situations in which the court should employ the one family/one team model over the one family/one judge model?

Answer: While there are no legal impediments to using either model, those who have been employing the one judge, one family model the longest have discovered many advantages.

### **Differing Burdens of Proof**

Question: When there are multiple related cases with different burdens of proof among the cases, or when there is evidence admissible in one case but not in another, should the judge consider not hearing all the cases to avoid the appearance of being unduly influenced by the conflicting evidence or lower burden of proof in one of the cases?

Answer: Our research has uncovered no Florida cases that would prohibit one circuit judge from handling overlapping UFC matters.

The circuit court certainly has jurisdiction to hear related cases. “The circuit court has jurisdiction over all matters concerning the custody and welfare of children. All circuit court judges have the same jurisdiction within their respective circuits. A judge in the probate division or the juvenile division or the civil division or the criminal division has the authority and jurisdiction to hear cases involving child custody and dependency. The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge’s jurisdiction.” In re Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978).

Cases have assumed that it is appropriate to handle overlapping matters. For example, in T.J. v. Department of Children & Families, 860 So. 2d 517, 518 (Fla. 4th DCA 2003), the court observed that the burden of proof in a paternity case did not change because the paternity issue arose in a Chapter 39 proceeding.

In handling multiple cases, however, the judge must be careful to announce the correct standard of proof upon which the judge’s rulings are being made.

### **Establishing Child Support Obligations: Ordering Child Support when there is a Change in Placement**

Question: What happens when custody is taken from one parent and granted to the other parent and no child support order was entered?

Answer: Failing to address child support matters when changing the primary placement of a child causes significant problems. Ideally, when the court determines that a change in custody from one parent to the other parent is required, the court should terminate the child support obligation of the former non-custodial parent (except arrears) and order appropriate child support payments to the new custodial parent. In the absence of a court order for child support, the non-custodial parent has no legal obligation to pay child support to the custodial parent. However, when the child support matter is corrected, the obligated parent will be required to pay a particular amount of arrears.

If the child is placed with someone other than a parent, as in a dependency case, then both parents should be ordered to pay their appropriate share of child support to the child’s new custodian. If the child was placed with one parent at the time of such a change in placement, then the former custodial parent should be ordered to pay child support to the new custodian, and the former non-custodial parent’s child support obligation should be recalculated, modified as necessary, and redirected to the new custodian.

### **Establishing Child Support Obligations: Orders in Domestic Violence and Dissolution Cases**

Question: How should one reconcile a child support order in a domestic violence case with a child support order subsequently entered in a dissolution of marriage case?

Answer: The order in the dissolution case is controlling. The court should also reconcile the two accounts in the resulting order

#### **Establishing Child Support Obligations: Child Support in Dependency Cases**

Question: Can a dependency court issue a child support order or suspend child support (consistent with the current placement of the child)?

Answer: Yes. A dependency court has jurisdiction over all child support matters including whether to suspend or modify child support obligations consistent with its placement of the child.

#### **Establishing Child Support Obligations: Crediting Established Arrears when there is a Change in Placement**

Question: Can the dependency court award credit towards established arrears when the child is placed with the parent who is in arrears?

Answer: It probably should not because child support, once due, is the vested right of the payee on behalf of the child. If a previously delinquent parent is awarded temporary custody of the child in a dependency case, the dependency court probably should not award that parent a credit towards his or her child support arrearage. The more appropriate procedure would be for that parent to pursue a modification of support.

#### **Establishing Child Support Obligations: Retroactive Child Support in Dependency Cases**

Question: Can the dependency court retroactively order support to the date the other parent gained legal custody even though in domestic relations cases retroactive support is limited to the date of the petition (except in establishing paternity)?

Answer: This issue is unsettled. While this particular issue is not addressed by statute, the reasoning used in domestic relations cases that prohibits retroactive support that predates the petition may be applicable in a dependency. However, an argument can be made that in the context of dependency, if the custody or placement of the child is changed by state action or by the court, then child support should accrue from the date of the change in custody or placement.

#### **Establishing Child Support Obligations: Suspension of Child Support when Child is in a Commitment Facility**

Question: Can the court suspend payment of child support while a child is in a DJJ commitment facility?

Answer: Probably not; however, this issue has not been settled in Florida either by statute or case law. States that have dealt with this issue tend to support a modification of child support during a period of commitment but rarely go so far as to suspend child support altogether.

#### **Establishing Child Support Obligations: Modifying Child Support from a Dependency Case that has Closed**

Question: How should continuing matters pertaining to child support be addressed when the only order of child support was entered in a dependency case that has since closed?

Answer: The dependency court, when originally ordering child support, may make a separate child support order to be filed with a civil case number so it can be enforced by the Department of Revenue, avoid revealing confidential information, and be modified after the dependency court's jurisdiction terminates. Another option is for the final order in the dependency case to provide that any future issues regarding child support be handled in the domestic relations forum. Lastly, the court may terminate supervision in the dependency case but retain jurisdiction to address subsequent child support issues.

Of course, if all of these matters are in a full-functioning UFC division, then these questions of jurisdiction and forum become moot. The Supreme Court adopted the Family Court Steering Committee's Recommendation #2 entitled "Family Division Structure and Jurisdiction" In re Report of the Family Court Steering Committee, 794 So. 2d 518, 525 (Fla. 2001). That recommendation anticipates that a fully implemented UFC will be a single, cohesive division of the court that is vested with jurisdiction over dissolution of marriage; division and distribution of property arising out of a dissolution of marriage; annulment; support unconnected with dissolution of marriage; paternity; child support; URESA/UIFSA; custodial care of and access to children; adoption; name change; declaratory judgment actions related to premarital, marital, or post-marital agreements; civil domestic and repeat violence injunctions; juvenile dependency; termination of parental rights; juvenile delinquency; emancipation of a minor; CINS/FINS; truancy; and modification and enforcement of orders entered in these cases. *Id.*

#### **Guardian ad Litem Issues**

Question: Can the same guardian ad litem serve in both a dependency case and a related domestic relations case?

Answer: Yes. There is no legal impediment to a guardian ad litem being dually appointed to a domestic relations case and a dependency case; in fact, dual appointments are often both practical and efficient.

#### **Judicial Access to Court Records: Confidentiality Considerations**

Question: Are there any statutory barriers to a judge's access to court files in related cases, and if so, how can a family court ensure it operates within those parameters?

Answer: A circuit judge's jurisdiction is not limited by division, and therefore judges will have equal access to all court files. Nonetheless, judges must be mindful of matters of confidentiality of court files and the appropriate ways to use files of related cases.

#### **Judicial Access to Court Records: Jurisdiction to Access Court Records of Related Cases**

Question: Do all judges hearing family cases have the right to review the contents of other family-related case files?

Answer: Yes. "All circuit court judges have the same jurisdiction within their respective circuits. ... The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge's jurisdiction." In the Interest of Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978). Since any circuit judge may be called upon to hear any case under the circuit court's jurisdiction, it is necessary for all judges to have equal access to all court files.

### **Judicial Access to Court Records: Disclosing the Review of Court Records of Related Cases**

Question: Does a judge have to disclose the review of related case files to anyone?

Answer: Sometimes. If the judge becomes aware of evidentiary matters while reviewing a related case file, the judge must disclose this to the parties and give them an opportunity to respond. A review of purely administrative matters that gives no advantage to any party is not considered ex parte and does not require disclosure to the parties.

### **Judicial Communication: Communications between Judges**

Question: To what extent can judges communicate with other judges regarding case management and case coordination?

Answer: A judge may consult with other judges to better carry out his or her adjudicative responsibilities. A judge may also consult with court personnel whose function is to aid the judge in carrying out his or her adjudicative responsibilities. Canon 3 B(7)(c), Code of Judicial Conduct.

### **Judicial Communication: Ex Parte Considerations**

Question: Do the communications presented in the preceding question constitute ex parte communication?

Answer: While they are ex parte communications in the sense that the parties to the case are not present, they are not prohibited ex parte communications as they do not deal with substantive or evidentiary matters. Prohibited ex parte communications are those between the court and a party in the litigation where the adverse party has not been given notice and an opportunity to respond.

### **Judicial Communication: Giving Notice of Judicial Communications**

Question: Are the judges required to give notice to parties/attorneys prior to conferring with another judge?

Answer: No, prior notice of communications between judges is not necessary when the communication is pertaining to case management or coordination. If the communication is for a substantive or evidentiary purpose, it is necessary to give notice and an opportunity to respond. Communications between a Florida judge and a judge of another state require prior notice so interested parties have an opportunity to be present.

### **Judicial Communication: Judicial Communications across Circuit or County Lines**

Question: What if the judges are in different circuits?

Answer: There are no special requirements for judges from different circuits to communicate about coordinating pending cases. CJC Canon 3B(7)(c), which says, "A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities," still applies.

### **Judicial Communication: Deciding which Judge Will Hear a Case**

Question: Do the family judges have to consider input from the parties before deciding which judge will hear the case?

Answer: No. Family judges should not consider input from the parties as to which judge should be assigned to a case. The judge should require the parties to inform the court of any related cases, and the judge may properly take this into consideration in assigning the case.

### **Judicial Communication: Email Correspondence**

Question: Are there any special requirements for email correspondence?

Answer: There are no special requirements for email correspondence that relate to administrative matters.

### **Media and Confidentiality**

Question: When the press attends court hearings, will confidentiality mandates prevent coverage of the entire proceeding if multiple related cases are heard? Which cases are closed to the press?

Answer: Adoption, Parental Status, and Termination of Parental Rights cases are closed proceedings. There is a strong presumption of openness for all other court proceedings, and public access includes media access. Trial courts do have the power to close all, or part of, a proceeding in limited circumstances and to take steps necessary to protect children.

When the UFC judge presides over multiple related cases, and one or more is closed per Statute, the court must consider the factors set out in Barron, *infra*, and adopted by Rule of Judicial Administration 2.420, to determine whether to close all or part of the proceeding. Findings of fact are required for all closure orders, as well as findings regarding the consideration of alternatives to closure. It is clear that the UFC judge may close a proceeding and order sealing of records to protect the interests of minor children.

### **Scope of Representation**

Question: What are the respective responsibilities of the court and the attorneys to advise litigants or parties of matters outside the scope of the attorneys' representation or appointment in coordinated cases?

Answer: The Court's Responsibility: In those situations in which a court appointed attorney is present in court on a coordinated case that is beyond the scope of the attorney's appointment, the court may verbally reference the order of appointment that limits the attorney's obligations so it is clear in the record. Also, the court should be mindful of confidential matters and ensure that only the correct parties are present unless confidentiality is properly waived.

The Attorney's Responsibility: The lawyer's obligation is to clearly explain the scope of his or her representation to the client and to operate in accordance with the order of appointment and the Rules Regulating the Florida Bar. It is also the attorney's responsibility to determine if there are any other cases that may affect his/her representation. An attorney should also inform the court if he or she has a limited obligation so the court will not treat an appearance as a general appearance for all purposes.

### **Notifying Parties and Attorneys that Related Cases will be Coordinated**

Question: When related cases are identified, should the court notify parties and attorneys that the cases will be coordinated, and should the notification be in writing?

Answer: Yes. Courts must notify the parties, attorneys, and participants in writing that related cases have been identified and will be coordinated. This notification should not be confused with legal notice.

**Stipulations: Stipulations to Hear Related Matters Together**

Question: Can the parties and counsel stipulate that at the evidentiary hearing on reunification in a dependency case, the court may also hear the former non-custodial parent's petition to modify custody?

Answer: Yes, but a stipulation is not required to do this. These matters can be heard together at the judge's discretion.

**Stipulations: Stipulation to Adopt the Order of a Related Case**

Question: Can the court, with the agreement of all parties and their counsel, adopt a custody and visitation order developed in a dependency case and incorporate that order into a final judgment in a dissolution or paternity case?

Answer: Yes, but the judgment should reflect that the dependency court's order as to these issues takes precedence pursuant to § 39.013(4). Additionally, a custody and visitation order of the dependency court is automatically filed in a dissolution or other custody matter pursuant to § 39.013(4).



